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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 JESSICA JONES,

10 Plaintiff,

11 v.
12

13 CAROLYN W. COLVIN,
14 Commissioner of Social Security,

15 Defendant.
16

No. 1:14-CV-03091-JTR

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

17 **BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF
18 Nos. 18, 20. Attorney D. James Tree represents Jessica Jones (Plaintiff); Special
19 Assistant United States Attorney Benjamin J. Groebner represents the
20 Commissioner of Social Security (Defendant). The parties have consented to
21 proceed before a magistrate judge. ECF No. 6. After reviewing the administrative
22 record and the briefs filed by the parties, the Court **GRANTS, in part,** Plaintiff's
23 Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary
24 Judgment; and **REMANDS** the matter to the Commissioner for additional
25 proceedings pursuant to 42 U.S.C. § 405(g).

26 **JURISDICTION**

27 Plaintiff filed an application for Supplemental Security Income (SSI) on
28 June 22, 2011, alleging disability for a closed period between June 1, 2007, and

1 August 3, 2012, due to physical and mental impairments. Tr. 215-24.

2 The SSI application was denied initially and upon reconsideration. Tr. 75-
3 87, 88-101. Administrative Law Judge (ALJ) Virginia M. Robinson held a hearing
4 on January 15, 2013, at which Plaintiff, represented by counsel, testified as did
5 vocational expert (VE) Trevor Duncan. Tr. 34-71. With Plaintiff's consent, the
6 ALJ amended the disability onset date to July 16, 2008, the date Plaintiff last
7 worked. Tr. 69-70. The ALJ issued an unfavorable decision on March 22, 2013.
8 Tr. 14-28. The Appeals Council denied review. Tr. 1-4. The ALJ's March 2013
9 decision became the final decision of the Commissioner, which is appealable to the
10 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial
11 review on June 27, 2014. ECF No. 1, 4.

12 **STATEMENT OF FACTS**

13 The facts of the case are set forth in the administrative hearing transcript, the
14 ALJ's decision, and the briefs of the parties. They are only briefly summarized
15 here.

16 Plaintiff was 38 years old at the beginning of the relevant period. Tr. 39.
17 Plaintiff attended school through the eighth grade, and has not obtained a GED.
18 Tr. 284. Plaintiff has worked in a warehouse, as a deli and seafood clerk at
19 Walmart, and as a commercial truck driver from 2005 to 2008. Tr. 284, 301. In
20 August 2012, Plaintiff started working as a cook at Triumph Treatment Center. Tr.
21 38, 69-70. Plaintiff testified that she "love[s] the job, but it's really hard on [her]." Tr.
22 44. Plaintiff gets along well with the other people at her job, and reported that
23 she generally "get[s] along with people." Tr. 44, 49.

24 Plaintiff's life has been tragic in many ways. She was physically and
25 sexually abused as a child by her step mother and other family members, and
26 abused as an adult by her husbands and partners. Tr. 370-72. Plaintiff has been
27 homeless for periods of time. Tr. 40, 55-56. Plaintiff has a history of depression,
28 drug use, and self-mutilation. See Tr. 341, 370-72. Plaintiff had four children, but

1 the State removed all of them from her care. Tr. 391.

2 At the administrative hearing, Plaintiff described being unable to work
3 because of depression and anxiety. Tr. 47. She also testified that physical pain in
4 her neck, knees, and back made working difficult. Tr. 58. She testified that,
5 between 2008 and 2012, she would typically sit and stare at the walls, watch
6 television, and sleep. Tr. 47. Plaintiff testified that she was afraid of people and
7 “wouldn’t leave the house,” except for medical appointments. Tr. 48. Plaintiff
8 reported attending group therapy and using medication to control her anxiety and
9 depression. Tr. 48.

10 STANDARD OF REVIEW

11 The ALJ is responsible for determining credibility, resolving conflicts in
12 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
13 1039 (9th Cir. 1995). The Court reviews the ALJ’s determinations of law de novo,
14 deferring to a reasonable interpretation of the statutes. *McNatt v. Apfel*, 201 F.3d
15 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is
16 not supported by substantial evidence or if it is based on legal error. *Tackett v.*
17 *Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as
18 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put
19 another way, substantial evidence is such relevant evidence as a reasonable mind
20 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402
21 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational
22 interpretation, the court may not substitute its judgment for that of the ALJ.
23 *Tackett*, 180 F.3d at 1097; *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595,
24 599 (9th Cir. 1999). Nevertheless, a decision supported by substantial evidence
25 will still be set aside if the proper legal standards were not applied in weighing the
26 evidence and making the decision. *Browner v. Secretary of Health and Human*
27 *Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence supports the
28 administrative findings, or if conflicting evidence exists that will support a finding

1 of either disability or non-disability, the ALJ's determination is conclusive.
2 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

3 SEQUENTIAL EVALUATION PROCESS

4 The Commissioner has established a five-step sequential evaluation process
5 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *see Bowen*
6 *v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of
7 proof rests upon claimants to establish a prima facie case of entitlement to
8 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once
9 claimants establish that physical or mental impairments prevent them from
10 engaging in their previous occupations. 20 C.F.R. § 416.920(a)(4). If claimants
11 cannot do their past relevant work, the ALJ proceeds to step five, and the burden
12 shifts to the Commissioner to show that (1) the claimants can make an adjustment
13 to other work and (2) specific jobs exist in the national economy which claimants
14 can perform. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-1194
15 (2004). If claimants cannot make an adjustment to other work in the national
16 economy, a finding of "disabled" is made. 20 C.F.R. § 416.920(a)(4)(i-v).

17 ADMINISTRATIVE DECISION

18 On March 22, 2013, the ALJ issued a decision finding Plaintiff was not
19 disabled as defined in the Social Security Act. At step one, the ALJ found Plaintiff
20 had not engaged in substantial gainful activity for a continuous twelve-month
21 period. Tr. 16. At step two, the ALJ determined Plaintiff had the following severe
22 impairments: degenerative disc disease, degenerative joint disease, affective
23 disorder, anxiety disorder, personality disorder, and eating disorder. Tr. 16-18. At
24 step three, the ALJ found Plaintiff did not have an impairment or combination of
25 impairments that met or medically equaled the severity of one of the listed
26 impairments. Tr. 18-20.

27 The ALJ assessed Plaintiff's residual function capacity (RFC) and
28 determined she had the ability to perform light work subject to some exceptions.

1 Despite her impairments, the ALJ found Plaintiff had the ability to: lift and/or
2 carry twenty pounds occasionally and ten pounds frequently; stand and/or walk,
3 and sit, for about six hours in an eight hour workday; frequently climb ramps and
4 stairs, and occasionally climb ladders, ropes or scaffolds; and, frequently stoop,
5 kneel, crouch, crawl. Tr. 20. The ALJ also found Plaintiff could complete simple
6 to moderately complex tasks, involving only simple, work-related decisions, and
7 could occasionally interact with the public, but must avoid concentrated exposure
8 to workplace hazards. Tr. 20.

9 The ALJ concluded at step four that Plaintiff was not able to perform her
10 past relevant work. Tr. 27. At step five, however, the ALJ determined that,
11 considering Plaintiff's age, education, work experience and RFC, and based on the
12 testimony of the VE, there were other jobs that exist in significant numbers in the
13 national economy Plaintiff could perform, including the jobs of production
14 assembler, housekeeper, and hand packager. Tr. 27-28. The ALJ thus concluded
15 Plaintiff was not under a disability within the meaning of the Social Security Act at
16 any time between July 26, 2008, and August 3, 2012. Tr. 28.

17 ISSUES

18 The question presented is whether substantial evidence supports the ALJ's
19 decision denying benefits and, if so, whether that decision is based on proper legal
20 standards. Plaintiff contends the ALJ erred by failing to (1) properly credit
21 Plaintiff's testimony about the severity of her symptoms; (2) accord weight to
22 "each and every" opinion of Plaintiff's treating and examining sources, including
23 their scoring of Plaintiff's Global Assessment of Functioning (GAF), ECF No. 18
24 at 11; (3) credit the lay witness testimony of Norman Landry; and, (4) account for
25 all of Plaintiff's limitations in the ALJ's RFC determination.

26 DISCUSSION

27 A. Plaintiff's Credibility

28 Plaintiff contests the ALJ's adverse credibility determination in this case.

1 ECF No. 18 at 20.

2 It is generally the province of the ALJ to make credibility determinations,
3 *Andrews*, 53 F.3d at 1039, but the ALJ's findings must be supported by specific
4 cogent reasons, *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
5 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's
6 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d
7 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).
8 "General findings are insufficient: rather the ALJ must identify what testimony is
9 not credible and what evidence undermines the claimant's complaints." *Lester*, 81
10 F.3d at 834.

11 In this case, the ALJ found Plaintiff's medically determinable impairments
12 could reasonably be expected to cause some of the alleged symptoms; however,
13 Plaintiff's statements concerning the intensity, persistence, and limiting effects of
14 these symptoms were not credible to the extent they were inconsistent with the
15 ALJ's RFC determination. Tr. 21. The ALJ reasoned that Plaintiff was less than
16 credible because (1) she worked immediately before and after her alleged period of
17 disability; (2) her ability to perform activities of daily living, including her ability
18 to engage socially, contradicted her reported limitations; (3) she received minimal
19 and conservative treatment for her physical impairments; (4) treatment notes
20 indicate "normal psychiatric observations"; and, (5) her testimony was
21 contradictory. Tr. 21-23. The ALJ did not find Plaintiff was malingering.

22 **1. Evidence of Employment Before and After Closed Period**

23 The ALJ's first reason for discounting Plaintiff's credibility, i.e., that she
24 worked immediately before and after her alleged period of disability, is based on
25 legal error. An ALJ should not use a claimant's activities outside the closed period
26 to discount Plaintiff's credibility. *Angulo v. Colvin*, 577 Fed. Appx. 686, 687 (9th
27 Cir. 2014); *see also Moore v. Commissioner of the Social Security Administration*,
28 278 F.3d 920, 924 (9th Cir. 2002) (noting "the Social Security Act and regulations

1 are designed to encourage individuals who have previously suffered from a
2 disability to return to substantial gainful employment.”) (internal quotation marks
3 omitted). Thus, the ALJ made a legal error in using Plaintiff’s employment outside
4 the closed period to discount her credibility.

5 **2. Activities of Daily Living (ADL)**

6 The ALJ’s second reason for discounting Plaintiff’s credibility, i.e., that her
7 symptom testimony was inconsistent with her ADL, is also not a specific, clear,
8 and convincing reason.

9 The ALJ pointed out that Plaintiff herself stated that she could perform
10 household chores. But Plaintiff does not contest that her physical impairments are
11 not disabling. Furthermore, her ability to perform household chores is within the
12 range of physical activity assessed by multiple physicians. The ALJ also cites to
13 the fact that Plaintiff is capable of working as a cook and actually enjoys her job.
14 As discussed *supra*, this does not necessarily mean that Plaintiff was capable of
15 working during the relevant period of this case.

16 The ALJ’s conclusion that Plaintiff’s attendance of a Cinco de Mayo parade
17 was indicative of Plaintiff being capable of engaging in social activity is not
18 supported by substantial evidence. Other than the one parade, there is practically
19 no mention of Plaintiff engaging in activities outside her home in the lengthy
20 administrative record other than medical appointments, therapy, and occasional
21 grocery shopping. *See Tackett*, 180 F.3d at 1098 (evidence must be more than a
22 “mere scintilla” to meet substantial evidence standard).

23 The ALJ also found that Plaintiff’s multiple romantic relationships
24 evidenced “social capability, flexibility, and adaptability.” Tr. 22. This statement
25 is also not supported by substantial evidence in the record. Treatment notes
26 indicate that Plaintiff’s relationships were often tumultuous and that she alternated
27 between seeking social connection and periods of self-isolation. *See, e.g.*, Tr. 399.
28 Multiple treatment providers noted that Plaintiff was estranged from her family and

1 had no social support network. *See, e.g.*, Tr. 401. Given Plaintiff's history and
2 need to connect with people, having two relationships with two different men over
3 a period of several years does not evidence "social capability, flexibility, and
4 adaptability." Tr. 22.

5 Finally, the ALJ noted that while Plaintiff was living in her sister's home she
6 was able to care for her nephew for some time between May and August 2012.
7 Being able to care for a child inside one's home does not necessarily evidence that
8 a claimant is capable of working. The ALJ's conclusion that caring for a child
9 required Plaintiff to "handle at least routine stressors and responsibilities, and
10 make simple judgments and decisions," Tr. 22, does not establish that Plaintiff
11 "spent[t] a substantial part of [her] day engaged in pursuits involving performance
12 of physical functions that are transferable to a work setting," which is required for
13 ADL to be grounds for an adverse credibility finding, *Orn v. Astrue*, 495 F.3d 625,
14 639 (9th Cir. 2007) (internal quotation marks omitted).

15 In summary, the ALJ's conclusion that Plaintiff's ADL are inconsistent with
16 her symptom testimony is not supported by substantial evidence and is based, in
17 part, on legal error. As such, this is not a specific, clear, and convincing reason for
18 discounting Plaintiff's credibility.

19 **3. Minimal and Conservative Treatment for Pain**

20 The ALJ's third reason for discounting Plaintiff's credibility, i.e., she
21 received minimal and conservative treatment for her neck and back pain, is not a
22 specific, clear, and convincing reason for rejecting her symptom testimony relating
23 to her mental impairments. As discussed *supra*, Plaintiff does not contest the
24 ALJ's determination that she is physically capable of a range of tasks. Rather,
25 Plaintiff disagrees with the ALJ's determination that her mental impairments do
26 not prevent her from working. Regarding her mental impairments, the record
27 reflects that Plaintiff largely complied with recommended courses of treatment
28 including participating in group and individual therapy and taking prescription

1 medication to help her anxiety and depression. The fact that Plaintiff did not seek
2 treatment for her physical pain is largely immaterial to her credibility regarding her
3 mental impairments.

4 **4. Treatment Notes Indicating Normal Presentation**

5 The ALJ's fourth reason for discounting Plaintiff's credibility, i.e., that
6 treatment notes often document "normal psychiatric observations," is similarly
7 unpersuasive. The ALJ correctly observes that numerous treatment notes state that
8 Plaintiff appeared to have normal attention span, concentration, mood, and affect,
9 and was alert and cooperative. Tr. 23. The ALJ then finds these observations
10 inconsistent with Plaintiff's testimony that she mostly stays home and avoids other
11 people. Tr. 23. The treatment note observations, however, have little, if anything,
12 to do with Plaintiff's ability to function socially. The fact that she can present
13 herself to a treatment provider to receive medical care in a one-on-one clinical
14 setting is not inconsistent with her testimony that she generally stays home and
15 avoids other people. This is not a specific, clear, and convincing reason to
16 discount Plaintiff's credibility.

17 The ALJ further cites to one instance where some of Plaintiff's test results
18 were invalid because she did not put forth maximum effort. Tr. 23, 363. The ALJ
19 concludes that these invalid tests indicate Plaintiff "is capable of significantly more
20 social contact than she described at the hearing, and that she may have a tendency
21 to provide exaggerated responses during mental testing." Tr. 23. The invalid test
22 results, however, appear to relate to tests for "General Memory" and "Auditory
23 Recog[nition]." Tr. 364. It is unclear how these invalid tests would measure
24 Plaintiff's social ability. Furthermore, the ALJ's inference from these invalid test
25 results, i.e., that Plaintiff generally has "a tendency to provide exaggerated
26 response," is not a specific reason to find Plaintiff incredible. *See Lester*, 81 F.3d
27 at 834 (general findings are insufficient).

28 The ALJ erred in discounting Plaintiff's credibility regarding her social

1 abilities based on treatment note observations and invalid test scores that had
2 nothing to do with social functioning.

3 **5. Contradictory Testimony**

4 The ALJ's final reason for discounting Plaintiff's testimony, i.e., Plaintiff's
5 contrary reasons for why she stopped working in 2007, was not in error. In
6 determining a claimant's credibility, the ALJ may consider "ordinary techniques of
7 credibility evaluation, such as the claimant's reputation for lying, prior inconsistent
8 statements . . . and other testimony by the claimant that appears less than candid."
9 *Smolen*, 80 F.3d at 1284. As pointed out by the ALJ, Plaintiff was inconsistent
10 about why she stopped working. *Compare* Tr. 47 (Plaintiff stating she was unable
11 to work because of depression and anxiety) *with* Tr. 54 (Plaintiff stating she lost
12 her job because she had beer in her truck's refrigerator) *and* Tr. 312 (Plaintiff
13 stating she stopped driving due to herniated disc in neck). Why Plaintiff stopped
14 working is significant to the disability determination and could be grounds to
15 question her credibility. But given that the ALJ's credibility determination is
16 flawed on several other grounds, this single inconsistency is not enough to discount
17 Plaintiff's symptom reporting in its entirety.

18 In sum, the ALJ's adverse credibility finding is based, in part, on legal errors
19 and is not entirely supported by substantial evidence. On remand, the ALJ should
20 reevaluate Plaintiff's credibility consistent with the Court's analysis *supra*.

21 **B. ALJ's Evaluation of Medical and "Other" Sources**

22 Plaintiff argues the ALJ failed to properly weigh the medical opinions of
23 "each and every one" of Plaintiff's treating and examining sources. ECF No. 18 at
24 12. More precisely, Plaintiff seems to challenge the ALJ's evaluation of the
25 sources that treated her for her mental impairments.

26 "In making a determination of disability, the ALJ must develop the record
27 and interpret the medical evidence." *Howard ex. rel. Wolff v. Barhart*, 341 F.3d
28 1006, 1012 (9th Cir. 2003). In weighing medical source opinions, the ALJ should

1 distinguish between three different types of physicians: (1) treating physicians,
2 who actually treat the claimant; (2) examining physicians, who examine but do not
3 treat the claimant; and, (3) nonexamining physicians who neither treat nor examine
4 the claimant. *Lester*, 81 F.3d at 830. The ALJ should give more weight to the
5 opinion of a treating physician than to the opinion of an examining physician.
6 *Orn*, 495 F.3d at 631. The ALJ should give more weight to the opinion of an
7 examining physician than to the opinion of a nonexamining physician. *Id.*

8 When a physician's opinion is not contradicted by another physician, the
9 ALJ may reject the opinion only for "clear and convincing" reasons. *Baxter v.*
10 *Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991). When a physician's opinion is
11 contradicted by another physician, the ALJ is only required to provide "specific
12 and legitimate reasons" for rejecting the opinion of the first physician. *Murray v.*
13 *Heckler*, 722 F.2d 499, 502 (9th Cir. 1983). Historically, the courts have
14 recognized conflicting medical evidence, the absence of regular medical treatment
15 during the alleged period of disability, and the lack of medical support for doctors'
16 reports based substantially on a claimant's subjective complaints of pain as
17 specific, legitimate reasons for disregarding a treating or examining physician's
18 opinion. *See, e.g., Flaten v. Secretary of Health and Human Servs.*, 44 F.3d 1453,
19 1463-1464 (9th Cir. 1995); *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989).

20 Plaintiff argues that the ALJ failed to properly credit the medical opinions of
21 Jan Kouzes, Ed.D.; Slyvia Thorpe, Ph.D.; and each of the three State agency
22 consultants: Leslie Postovoit, Ph.D.; Eugene Kester, M.D.; and, Matthew Comrie,
23 Psy.D. Plaintiff also argues that the ALJ did not properly credit the opinions of
24 "other" sources, including the opinions of Plaintiff's therapists.

25 **1. Jan Kouzes, Ed.D.**

26 Plaintiff presented to Dr. Kouzes for a consultative psychological evaluation
27 on June 2, 2011. Tr. 457-62. Dr. Kouzes diagnosed Plaintiff with major
28 depressive disorder, recurrent, severe, without psychotic symptoms; posttraumatic

1 stress disorder (PTSD); and, borderline personality disorder. Tr. 459. Dr. Kouzes
2 assessed several moderate limitations on Plaintiff's ability to perform basic work
3 related tasks. Tr. 459-60. Dr. Kouzes found Plaintiff markedly¹ limited in her
4 ability to (1) be aware of normal hazards and take appropriate precautions; (2)
5 communicate and perform effectively in a work setting with public contact; and,
6 (3) maintain appropriate behavior in a work setting. Tr. 460. In her medical
7 source statement, Dr. Kouzes concluded, "[Plaintiff] was alert and oriented. She
8 evidenced problems with memory and concentration. Her response time was
9 slowed and she requested that questions be repeated, restated. She appeared
10 confused. She is likely to need significant services, food, housing DVR to make an
11 effective return to work." Tr. 460.

12 The ALJ gave little weight to Dr. Kouzes' opinion because (1) Dr. Kouzes
13 "did not review any treatment notes other than one emergency room visit"; (2) Dr.
14 Kouzes' opinions were based on Plaintiff's unreliable self-reporting; and, (3) Dr.
15 Kouzes did not complete a mental status examination, suggesting that Dr. Kouzes
16 did not carefully review and complete the State agency form. Tr. 25-26.

17 The ALJ did not give specific and legitimate reasons for rejecting Dr.
18 Kouzes' opinions.

19 First, the ALJ's conclusion that Dr. Kouzes reviewed only one record was
20 clearly erroneous as Dr. Kouzes lists four medical records that she reviewed,
21 including two State agency psychological evaluations, on the front page of her
22 evaluation. Tr. 457. Defendant appears to concede that "the ALJ may have been
23 mistaken in this respect." ECF No. 20 at 12.

24 Second, as discussed *supra*, the ALJ did not give specific, clear, and
25 convincing reasons for discounting Plaintiff's credibility, especially in regards to
26

27 ¹A "marked" limitation would have a "very significant interference" in the
28 individual's ability to perform certain tasks. Tr. 459.

1 her reporting of her social functioning. Thus, the ALJ's second reason for
2 rejecting Dr. Kouzes' opinions also fails.

3 Thirdly, the ALJ's suggestion that Dr. Kouzes neither completed a mental
4 status examination nor carefully completed the form is unfounded. As documented
5 in her evaluation, Dr. Kouzes did administer a mental status exam, Tr. 461-62, as
6 well as reviewed Plaintiff's psychiatric records and personally observed Plaintiff,
7 Tr. 457-62. In her medical source statement, Dr. Kouzes quoted Plaintiff, but also
8 reached her own conclusions based on her professional judgment. *See* Tr. 460.
9 Nothing would suggest that Dr. Kouzes was not careful and complete in
10 completing her evaluation or that she acted in anyway contrary to a "highly
11 qualified" medical specialist and an "expert[]" in Social Security disability
12 evaluation." 20 C.F.R. § 416.927(e)(2)(i).

13 The ALJ did not give specific and legitimate reasons for discounting Dr.
14 Kouzes' opinions.

15 **2. Sylvia Thorpe, Ph.D.**

16 Plaintiff presented to Dr. Thorpe for a psychological evaluation on March
17 10, 2009. Tr. 363-72. Dr. Thorpe diagnosed Plaintiff with major depressive
18 disorder; pain disorder associated with both psychological factors and a general
19 medical condition; alcohol abuse disorder; and, polysubstance dependence
20 disorder, in full sustained remission. Tr. 367. Dr. Thorpe opined that Plaintiff's
21 mental impairments would have a moderate impact on her ability to work. Tr.
22 367-68. Dr. Thorpe recommended treatment with medication and regular
23 substance abuse therapy. Tr. 369. Dr. Thorpe estimated that Plaintiff's limitations
24 would last three to six months. Tr. 369.

25 The ALJ gave "some weight" to Dr. Thorpe's evaluation. Tr. 25. The ALJ
26 reasoned that Dr. Thorpe found Plaintiff had only moderate limitations and few of
27 these limitations would impact her work-related abilities. Tr. 25. The ALJ also
28 cited Dr. Thorpe's conclusion that some of Plaintiff's test results were invalid

1 because Plaintiff “gave up easily” on the tests. Tr. 25; 363. The ALJ further noted
2 that Dr. Thorpe opined that Plaintiff’s limitations were temporary. Tr. 25, 369.

3 The ALJ gave specific and legitimate reasons for giving limited weight to
4 Dr. Thorpe’s evaluation. The mere diagnosis of an impairment is insufficient to
5 sustain a finding of disability; the impairment must actually limit a claimant’s
6 ability to work. *See Key v. Heckler*, 754 F.2d 1545, 1549 (9th Cir. 1985). The
7 ALJ correctly noted that although Dr. Thorpe found Plaintiff to have numerous
8 impairments, Dr. Thorpe ultimately concluded the impairments would not preclude
9 Plaintiff from working. Tr. 25, 369. Furthermore, the ALJ did not err in
10 considering Dr. Thorpe’s opinion that Plaintiff failed to put forth maximum effort
11 in clinical testing (although as discussed *supra*, the invalid tests do not seem to
12 measure Plaintiff’s social functioning and the ALJ erred in using the invalid results
13 to question Plaintiff’s general credibility). *See Thomas v. Barnhart*, 278 F.3d 947,
14 959 (9th Cir. 2002) (ALJ may consider a claimant’s failure “to give maximum or
15 consistent effort during . . . evaluations). Finally, Dr. Thorpe’s opinion that
16 Plaintiff’s impairments would last for only three to six months, Tr. 369, is another
17 legitimate reason for giving the opinion little weight. *See* 42 U.S.C. §
18 1382c(a)(3)(A) (disability must be premised on medically determinable physical or
19 mental impairments that have “lasted or can be expected to last for a continuous
20 period of not less than twelve months”). The ALJ did not err in evaluating Dr.
21 Thorpe’s opinions.

22 **3. State Agency Reviewing Psychologists and Psychiatrists**

23 Three state agency psychiatric consultants—Drs. Postovoit, Kester, and
24 Comrie—reviewed Plaintiff’s medical records. *See* Tr. 83-85 (Dr. Postovoit’s
25 review dated July 26, 2011), 97-99 (Dr. Kester’s review dated September 24,
26 2011), 411-27 (Dr. Comrie’s review dated June 8, 2009).

27 Dr. Comrie found Plaintiff was mildly limited in activities of daily living,
28 markedly limited in maintaining social functioning, and moderately limited in

1 maintaining concentration, persistence, or pace. Tr. 421. Dr. Comrie indicated
2 that Plaintiff could perform simple routine tasks and would be able to work with
3 coworkers and supervisors, but that she should have “limited” contact with the
4 public. Tr. 427. The ALJ gave great weight to Dr. Comrie’s opinion that Plaintiff
5 could perform simple routine tasks, but gave no weight to his opinion that Plaintiff
6 was markedly limited in maintaining social functioning as he did not describe the
7 extent of the limitation. Tr. 25.

8 Drs. Postovoit and Kester both opined that Plaintiff’s mental impairments
9 would moderately impact her ability to carry out work related activities and that
10 Plaintiff would have difficulties around crowds. Tr. 83-85, 98-99. Both doctors
11 concluded that Plaintiff was not disabled. Tr. 87, 101. The ALJ gave some weight
12 to these opinions, reasoning that they were largely consistent with the ALJ’s RFC
13 determination. Tr. 25. The ALJ gave little weight to Drs. Postovoit and Kester’s
14 opinions that Plaintiff would be distracted, have reduced mental energy, and have
15 difficulties around crowds. Tr. 25. The ALJ reasoned that these opinions were
16 internally inconsistent and did not set forth the extent of the limitations. Tr. 25.

17 The ALJ erred to the extent that she gave the opinions of Drs. Postovoit,
18 Kester, and Comrie greater weight than the opinions of Plaintiff’s treating and
19 examining physicians, particularly the opinions of Dr. Kouzes. *See Lester*, 81 F.3d
20 at 830 (“The opinion of a nonexamining physician cannot by itself constitute
21 substantial evidence that justifies the rejection of the opinion of either an
22 examining physician or a treating physician.”) (citations omitted). Notably, each
23 reviewing doctor stated that Plaintiff would have difficulties with social
24 functioning; significantly, Dr. Comrie opined that Plaintiff was markedly limited in
25 her ability to maintain social functioning. Tr. Tr. 83-85, 98-99, 421. These social
26 limitations are seemingly consistent with Plaintiff’s self-reporting and the opinion
27 of Dr. Kouzes. On remand, the ALJ may need to reevaluate the opinions of Drs.
28 Postovoit, Kester, and Comrie after reevaluating Plaintiff’s credibility and Dr.

1 Kouzes' opinions consistent with the Court's analysis *supra*.

2 **4. "Other" medical sources**

3 Plaintiff argues that the ALJ erred in considering the opinions of "other"
4 medical sources, including Chris Clark, M.Ed.; Deborah Blaine, M.S.; Ginny
5 Baum, L.M.H.C.; Megan Crouse, L.I.C.S.W.; and, Jenny Walter P.A.C.

6 Generally, the ALJ should give more weight to the opinion of an acceptable
7 medial source than to the opinion of an "other source," such as a therapist,
8 physician's assistant, or social worker. 20 C.F.R. § 416.913(d). An ALJ is
9 required, however, to consider evidence from "other sources," 20 C.F.R. §
10 416.913(d); S.S.R. 06-03p, "as to how an impairment affects a claimant's ability to
11 work," *Sprague*, 812 F.2d at 1232. An ALJ must give "germane" reasons to
12 discount evidence from "other sources." *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th
13 Cir. 1993). Germane reasons to discount an opinion include contradictory opinions
14 and lack of support in the record. *Thomas*, 278 F.3d at 957. Even though medical
15 source evidence is the only way to establish an impairment, an ALJ cannot ignore
16 information from non-acceptable medical sources regarding a claimant's physical
17 and mental capabilities. *Sprague*, 812 F.2d at 1232.

18 **a. Mr. Clark and Ms. Blaine**

19 Mr. Clark and Ms. Blaine completed an initial assessment upon Plaintiff's
20 commencement of treatment at Central Washington Comprehensive Mental Health
21 (CWCMH) in April 2012. Tr. 726-30. The ALJ gave little weight to the opinions
22 contained in this assessment. Tr. 26. The ALJ reasoned that the opinions were
23 vague, unexplained, did not contain an assessment of Plaintiff's functional
24 limitations, relied on Plaintiff's unreliable self-reporting, and was inconsistent with
25 the record as a whole, particularly Plaintiff's return to work four months later. Tr.
26 26.

27 The ALJ did not err in assigning little weight to Mr. Clark and Ms. Blaine's
28 assessment. Although the Court concluded *supra* that the ALJ's characterization

1 of Plaintiff's symptom reporting as "unreliable" is unfounded, the additional
2 reasons provided by the ALJ are germane. Given the fact that the assessment was
3 based on an intake or "screening" interview, Tr. 726, it is unsurprising that the
4 opinions are "vague" and "unexplained," Tr. 26. And the ALJ correctly noted that
5 the assessment made no attempt to assess Plaintiff's functional limitations. *See*
6 *Key*, 754 F.2d at 1549 (mere diagnosis of an impairment is insufficient to sustain a
7 finding of disability). The ALJ did not err in evaluating Mr. Clark and Ms.
8 Blaine's April 2012 assessment.

9 **b. Ms. Baum**

10 Ms. Baum, a counselor at Interfaith Community Health Center in
11 Bellingham, Washington, completed a report after an initial psychiatric
12 consultation on April 22, 2009. Tr. 397-402. Ms. Baum reviewed Plaintiff's
13 history and diagnosed her with borderline personality disorder, history of
14 amphetamine abuse, PTSD, and major depressive disorder. Tr. 401. Ms. Baum
15 noted that Plaintiff had "not been able to sustain many jobs for long due to
16 emotional instability and physical illness." Tr. 399. Ms. Baum recommended
17 Plaintiff continue to participate in therapy. Tr. 401-02. The ALJ gave little weight
18 to Ms. Baum's evaluation reasoning that it was vague and because the ALJ could
19 not "determine what specific limitations [Ms. Baum] believed [Plaintiff] had." Tr.
20 26.

21 The ALJ did not err in assigning little weight to Ms. Baum's opinions.
22 Similar to the intake assessment completed by Mr. Clark and Ms. Blaine, discussed
23 *supra*, Ms. Baum's report after her initial consultation with Plaintiff does little
24 more than detail Plaintiff's history and complaints. Ms. Baum does not make her
25 own clinical findings or attempt to assess Plaintiff's functional limitations.
26 Therefore, the ALJ did not err in giving little weight to Ms. Baum's opinions.

27 **c. Ms. Walter**

28 Ms. Walter, a physician's assistant who is often named as Plaintiff's primary

1 care provider, completed a physical evaluation of Plaintiff for purposes of
2 Plaintiff's application for State benefits on March 27, 2009. Tr. 343-52. Ms.
3 Walter opined that Plaintiff's mental and physical impairments caused severe
4 limitations that would preclude Plaintiff from working. Tr. 345. The ALJ rejected
5 this opinion because it was based on Plaintiff's unreliable self-reporting. Tr. 24.

6 As discussed *supra*, the ALJ's characterization of Plaintiff's symptom
7 reporting as "unreliable" is unfounded. While this would typically be sufficient
8 grounds to remand for further consideration, any error the ALJ made in evaluating
9 Ms. Walter's opinion is harmless. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1038
10 (9th Cir. 2008) (an error is harmless when "it is clear from the record that the . . .
11 error was inconsequential to the ultimate nondisability determination."). Ms.
12 Walter's opinions are contained in a *physical* evaluation completed for purposes of
13 Plaintiff's application for State benefits. It is unclear why Ms. Walter offered
14 opinions regarding Plaintiff's mental impairments in a physical evaluation.
15 Furthermore, Plaintiff is not contesting that the ALJ erred in evaluating her
16 physical impairments so any error in weighing Ms. Walter's physical evaluation is
17 inconsequential to the ultimate nondisability determination.

18 **d. Ms. Crouse**

19 Ms. Crouse, a social worker at Interfaith Community Health Center
20 performed an intake evaluation on May 2, 2009. Tr. 391-96. Ms. Crouse stated
21 that Plaintiff's "functional status" was moderately impaired due to Plaintiff's
22 "chronic and/or variably severe deficits in interpersonal relationships, ability to
23 engage in socially constructive activities, and ability to maintain responsibilities."
24 Tr. 395. The ALJ did not discuss this opinion, but the ALJ did not err in failing to
25 do so. Numerous medical sources opined that Plaintiff was moderately limited in
26 social functioning. *See, e.g.*, Tr. 367-68 (Dr. Thorpe); Tr. 83-85 (Dr. Postovoit);
27 Tr. 98-99 (Dr. Kester). The ALJ considered these opinions and generally gave
28 some weight to the assessment that Plaintiff was moderately limited in social

1 functioning, as reflected in the ALJ's RFC determination. *See* Tr. 20 (noting
 2 Plaintiff could "occasionally interact with the public"). Given these opinions, Ms.
 3 Crouse's assessment is largely cumulative. Thus, Ms. Crouse's assessments are
 4 "neither significant nor probative," and the ALJ did not err in failing to address
 5 them. *See Howard*, 341 F.3d at 386 (ALJ is not required to discuss evidence that
 6 "is neither significant nor probative.")

7 **C. GAF Scores**

8 Plaintiff argues that the ALJ erred by rejecting the GAF scores assessed by
 9 Plaintiff's medical providers. ECF No. 18 at 19.

10 The GAF scale "is the scale used in the multiaxial evaluation system
 11 endorsed by the American Psychiatric Association." 65 Fed. Reg. 50,746, 50,765
 12 (Aug. 21, 2000). Generally, GAF Scores do not have a direct correlation to the
 13 severity requirements in [the Social Security Administration's] mental disorders
 14 listings." *Id.*; *see also McFarland v. Astrue*, 288 Fed. Appx. 357, 359 (9th Cir.
 15 2008). Standing alone, "a low GAF score does not necessarily evidence an
 16 impairment seriously interfering with a claimant's ability to work." *Lee v.*
 17 *Barnhart*, 117 Fed. Appx. 674, 678 (10th Cir. 2004). But GAF scores can
 18 sometimes be of "considerable help" when read in context with the medical
 19 evidence as a whole. *Howard v. Comm'r of Soc. Sec.*, 276 F.3d 235, 241 (6th
 20 Cir.2002).

21 In this case, the ALJ noted that Plaintiff's GAF scores, which ranged from
 22 36 to 55, were "quite low."² Tr. 26. But the ALJ gave little weight to these scores

24 ²As pointed out by Defendant, "A GAF of 31-40 indicates '[s]ome
 25 impairment in reality testing or communication (e.g., speech is at time illogical,
 26 obscure, or irrelevant) or major impairment in several areas such as work or
 27 school, family relations, judgment, thinking, or mood (e.g., a depressed man avoids
 28 friends, neglects family, and is unable to work . . .)." ECF No. 20 at 17 (quoting

1 because they were based on Plaintiff's unreliable self-reporting. Tr. 26. The ALJ
2 also stated that she did not "place a high degree of reliance on these scores or any
3 opinions associated with the scores" because "GAF scores are highly subjective."
4 Tr. 26.

5 The ALJ erred in rejecting Plaintiff's GAF scores. As discussed *supra*, the
6 ALJ's characterization of Plaintiff's symptom reporting as less than credible is
7 unfounded and not a reason to reject the GAF scores assessed by Plaintiff's
8 treatment providers. Furthermore, the ALJ's general skepticism of GAF scores is
9 not grounds for rejecting them. On remand, the ALJ should consider the GAF
10 scores in context with the medical observations and opinions that accompany them.

11 **D. Lay Witness Testimony**

12 Plaintiff argues that the ALJ failed to properly consider the statements of
13 Norman Landry, Plaintiff's ex-boyfriend. ECF No. 18 at 25-27.

14 Lay witness testimony cannot establish the existence of medically
15 determinable impairments. *Cf.* 20 C.F.R. § 416.913(d)(a). But lay witness
16 testimony is "competent evidence" as to "how an impairment affects [a claimant's]
17 ability to work." *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050 (9th Cir.
18 2006); 20 C.F.R. § 416.913(d)(4); *see also Dodrill*, 12 F.3d at 918-19 ("[F]riends
19 and family members in a position to observe a claimant's symptoms and daily
20 activities are competent to testify as to her condition."). Simply stating that the
21 lay witness testimony does not objectively establish a medically determinable
22 impairment is not a germane reason for rejecting lay witness testimony that
23 concerns a claimant's ability to work. *See Bruce v. Astrue*, 557 F.3d 1113, 1115
24 (9th Cir. 2009) (stating that the ALJ "should not have discredited [a lay witness's]
25 testimony on the basis of its relevance or irrelevance to medical conclusions.").

27 American Psychiatric Ass'n, *Diagnostic & Statistical Manual of Mental Disorders*
28 34 (4th ed. Text Revision 2000) (DSM-IV-TR)).

1 Mr. Landry and Plaintiff were in a relationship from July 2008 to May 2011.
2 Tr. 313. Mr. Landry stated that he and Plaintiff would go on walks and watch
3 television. Tr. 255. Mr. Landry stated that Plaintiff had anxiety and would spend
4 most of her time in her room. Tr. 255. Mr. Landry noted that Plaintiff “hardly
5 sleeps, constantly worries about everything, and [is] always on edge” and is
6 forgetful. Tr. 256-57, 315. Mr. Landry stated that Plaintiff can make sandwiches,
7 use public transportation, shop for food and personal items, perform household
8 chores, and take care of herself. Tr. 257-58, 314. Mr. Landry stated that Plaintiff
9 is unable to clean the house or handle money. Tr. 257-58; *but see* Tr. 315-16 (Mr.
10 Landry reported Plaintiff able to clean and do laundry and handle money). Mr.
11 Landry describes Plaintiff as a “loner” who has “a lot of difficulties getting along
12 with others.” Tr. 259-60, 317-18.

13 The ALJ gave little weight to Mr. Landry’s statements because of internal
14 inconsistencies and inconsistencies between Mr. Landry’s two statements, the
15 medical evidence, and Plaintiff’s reported activities. Tr. 23.

16 The ALJ erred in giving little weight to Mr. Landry’s statements. Although
17 Mr. Landry’s statements were not perfectly consistent, in most instances, they
18 aligned with Plaintiff’s own reports. Plaintiff does not contest that she is
19 physically capable of performing certain ADL. Mr. Landry’s description of
20 Plaintiff’s isolating behavior and lack of social functioning skills is likewise
21 similar to Plaintiff’s own reporting and the assessments of Plaintiff’s examining
22 and reviewing medical sources. The fact that Mr. Landry’s statements are contrary
23 to some of the medical evidence is not a germane reason for rejecting his testimony
24 concerning Plaintiff’s ability to work. *Bruce*, 557 F.3d at 1115. On remand, the
25 ALJ should reconsider Mr. Landry’s statements consistent with the Court’s rulings
26 *supra*.

27 **E. RFC and Hypothetical Questions**

28 Plaintiff argues that the ALJ failed to include all of Plaintiff’s limitations in

1 the ALJ's formulation of Plaintiff's RFC. Plaintiff argues that the ALJ concluded
2 that Plaintiff could not work a full workday because the ALJ determined that
3 Plaintiff was only able to "stand and/or walk, and sit, for about six hours in an
4 eight-hour day," Tr. 20. ECF No. 18 at 27.

5 Given that the Court is remanding the case for the ALJ to reconsider the
6 evidence in light of the errors discussed *supra*, the Court need not reach the issue
7 of whether the ALJ erred in her RFC determination and hypothetical questions to
8 the VE. If, on remand, the ALJ concludes that Plaintiff has different functional
9 limitations, then the ALJ should modify her RFC determination accordingly.

10 On a final note, the Court disagrees with Plaintiff's argument that the ALJ's
11 RFC determination means that Plaintiff is only capable of standing/walking/and
12 sitting for a combined total of six hours a day. The ALJ's phrasing is perhaps
13 somewhat ambiguous. But as pointed out by Defendant, the ALJ apparently
14 intended to adopt the physical RFC assessment agreed upon by multiple reviewing
15 medical sources. ECF No. 20 at 20. Dr. Robert Bernardez-Fu opined that Plaintiff
16 could stand and/or walk (with normal breaks) for a total of about six hours in an
17 eight-hour workday, and sit (with normal breaks) for a total of about six hours in
18 an eight-hour workday. Tr. 95. Mary Knox, SDM and Juanita Casebolt-Baez
19 assessed identical stand/walk/sit limitations. Tr. 82, 404. Furthermore, in
20 discussing the opinion of David Martinez, DO, the ALJ opined that Plaintiff could
21 "stand and/or walk, and sit, for about four hours in an eight-hour day." Tr. 24.
22 The ALJ then essentially parsed this limitation to mean "[Plaintiff] can sit for four
23 hours, and stand for four hours." Tr. 24. Given the identical opinions of three
24 consulting medical experts, as well as the ALJ's apparent understanding of her
25 phrasing evidenced elsewhere in her opinion, the Court concludes that the ALJ's
26 RFC meant that Plaintiff could stand, walk, and sit for six hours each, or for at
27 least eight hours in some combination. Even though the Court finds no error in
28 this regard, the ALJ might consider rephrasing her walk/stand/sit limitations in any

1 subsequent decision to avoid ambiguity.

2 CONCLUSION

3 Plaintiff argues the ALJ's decision should be reversed and remanded for an
4 immediate award benefits. The Court has the discretion to remand the case for
5 additional evidence and findings or to award benefits. *Smolen*, 80 F.3d at 1292.
6 The Court may award benefits if the record is fully developed and further
7 administrative proceedings would serve no useful purpose. *Id.* Remand is
8 appropriate when additional administrative proceedings could remedy defects.
9 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court
10 finds that further development is necessary for a proper determination to be made.

11 On remand, the ALJ shall reexamine Plaintiff's statements and testimony
12 and reassess Plaintiff's RFC, taking into consideration the opinions of Dr. Kouzes'
13 and the State agency reviewing physicians, the statements of Mr. Landry, and all
14 other medical evidence of record relevant to Plaintiff's claim for disability
15 benefits.

16 In Plaintiff's reply brief, she requests that she "be allowed to amend her
17 closed period of disability to a continuing period of disability if her attempt to
18 work ended due to her impairments prior to the end of her trial work period, or her
19 work attempt ended up being an unsuccessful attempt." ECF No. 22 at 20. The
20 Court makes no ruling on this request. But the Court sees no reason why Plaintiff
21 may not raise the issue before the ALJ on remand.

22 Accordingly, **IT IS ORDERED:**

23 1. Defendant's Motion for Summary Judgment, **ECF No. 20**, is
24 **DENIED**.

25 2. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is
26 **GRANTED, in part**, and the matter is **REMANDED** to the Commissioner for
27 additional proceedings consistent with this Order.

28 3. Application for attorney fees may be filed by separate motion.

1 The District Court Executive is directed to file this Order and provide a copy
2 to counsel for Plaintiff and Defendant. **Judgment shall be entered for Plaintiff**
3 and the file shall be **CLOSED**.

4 DATED April 8, 2015.

A handwritten signature in black ink, appearing to be "M" followed by a stylized flourish.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE